

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
John E. Porter

Case Number: 20-03063

vs.

Respondent  
Morgan Stanley

Hearing Site: Jacksonville, Florida

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant John E. Porter (“Claimant”): David I. Hantman, Esq., Bressler, Amery & Ross, P.C., New York, New York.

For Respondent Morgan Stanley, Morgan Stanley Smith Barney, LLC (“Respondent”): Jeremy S. Winer, Esq., Morgan Stanley, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: September 9, 2020.  
Claimant signed the Submission Agreement: September 8, 2020.

Statement of Answer filed on or about: October 29, 2020.  
Respondent signed the Submission Agreement: October 29, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent did not oppose Claimant’s expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1458317 and 1464431 and \$1.00 in damages.

In the Statement of Answer, Respondent opposed Claimant's request for \$1.00 in damages.

At the hearing, Claimant withdrew the request for \$1.00 in damages.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On January 26, 2021, Claimant advised that the customers in Occurrence Numbers 1458317 and 1464431 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notices"). Claimant filed a copy of the FedEx tracking information available online for the Notices.

The Arbitrator conducted a recorded, telephonic hearing on March 4, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

None of the Customers participated in the expungement hearing. The Arbitrator found that the Customers had notice of the expungement request and hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1458317, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant did not contribute to the settlement amount.

The Arbitrator noted that the dispute related to Occurrence Number 1464431 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony, Statement of Claim, and Claimant's Exhibits A-P.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

The Arbitrator recommends the expungement of all references to Occurrence Numbers 1458317 and 1464431 from registration records maintained by the CRD for Claimant John Emerson Porter (CRD Number 2891488) with the understanding that, pursuant to Notice to Members 04-16, Claimant John Emerson Porter must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code of Arbitration Procedure (“Code”), the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

**Occurrence Number 1458317**

The customers’ account was handled, for the vast majority of the time the account was at Respondent, by another experienced financial advisor and Certified Financial Planner who was a friend and neighbor of the customers. Claimant’s involvement was to handle one of the customers’ accounts, which was in a fee-based managed portfolio. In accordance with the customers’ stated investment objectives, the account initially held approximately 70% equities, 25% bonds, and 5% cash. Shortly thereafter, in December of 2008, the customers objected to paying wrap fees on municipal bonds and requested that the municipal bonds be removed from the managed account and transferred to another account with Respondent. While this did not result in an overconcentration of equities in the customers’ overall accounts, it did result in a high percentage of equities in the managed portfolio. During the financial crisis that occurred in late 2008 and early 2009, the managed account declined significantly due to the large percentage of equities. Expungement is recommended as the customers, experienced investors, not Claimant, requested removal of the municipal bonds from the managed account.

**Occurrence Number 1464431**

The customer is a wealthy, experienced investor who remains Claimant’s client. During the financial crisis of 2008 and 2009, the customer requested that Claimant research short exchange traded funds (“ETFs”) that didn’t declare capital gains distributions, as the customer wanted a hedge in his account and to avoid paying income tax. Claimant recommended against shorting the market, but the customer wanted to do so. Claimant researched the largest short ETFs that had not declared capital gains the previous year, and the client decided to invest in four of them. Shortly thereafter, the funds declared capital gains, resulting in the customer incurring a significant tax debt. The claim for tax reimbursement was denied by Morgan Stanley. Expungement is recommended as the purchase of the short ETFs was at the customer’s request and against the Claimant’s advice. Furthermore, Claimant had no way of knowing that the ETFs were going to declare capital gains that year.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

FINRA Dispute Resolution Services assessed a filing fee\* for each claim:

Initial Claim Filing Fee = \$ 50.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge Fee = \$ 150.00

**Hearing Session Fees and Assessments**

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: March 4, 2021 1 session		
<hr/> Total Hearing Session Fees	= \$	50.00

The Arbitrator has assessed the total hearing session fees to Claimant.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

**ARBITRATOR**

Richard S. Zaifert

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

**Arbitrator's Signature**

***Richard S. Zaifert***

Richard S. Zaifert  
Sole Public Arbitrator

**03/08/2021**

Signature Date

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March 08, 2021

Date of Service (For FINRA Dispute Resolution Services use only)